IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

TUESDAY, THE 30TH OCTOBER 2007 / 8TH KARTHIKA 1929

CRL.A.No. 2092 of 2007

SC.507/2004 OF ADDL.SESSIONS COURT--, KOZHIKODE DIVISION
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APPELLANT: APPELLANT/COMPLAINANT

STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. K.C.SANTHOSH KUMAR

RESPONDENTS: ACCUSED
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1. VALATHODUKAYIL ABDUL MAJEED, S/O.
BICHALI HAJI, VAVAD AMSOM, PAVAKKODE DESOM.

2. VALATHODUKAYIL ABDUL SALIM, S/O.
BICHALI HAJI, ELETTIL AMSOM,
VALIYAPARAMBATHU DESOM.

BY

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 30/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.HEMA,JJ.

Crl.A.NO. 2092 OF 20O4
and
Crl.M.Appl. 10988 of 2007

Dated this the 30th day of October, 2007

JUDGMENT

Koshy, J.

Crl. M. Appl. No.10988 of 2007 is filed to condone the delay of 598 days in filing the appeal. Absolutely no satisfactory reasons are stated in the application for condoning the delay. The judgment was pronounced on 27.8.2005. Copy application was filed only on 5.12.2006, after about one year and four months. No explanation is given for the long delay in applying for certified copy of the judgment. It is stated that certified copy was received on 18.12.2006. But it was stated to the office of the Advocate General only on 1.12.2006. The date is not correct. The file was forwarded to DGP on 6.2.2007 and legal opinion was submitted on 12.3.2007. But the criminal appeal was prepared and filed only on 16.7.2007. The long delay occurred is not explained. In these conditions, in the absence of any satisfactory materials, we are unable to condone the long delay of 598 days. But to satisfy our judicial mind, we have also gone through the prima facie merits of the matter.

2. The allegation of the prosecution was that on 30.8.1999 at 12.15 pm the respondents (accused 1 and 2) in furtherance of their common intention, intentionally caused the death of one Abdul Basheer and thereby committed offences punishable under Sections 324 and 302 read with Section 34 of the Indian Penal Code. At 7.30 pm on the same day the said Abdul Basheer died. Autopsy was conducted by PW9 and Exhibit P9 postmortem certificate was issued. It shows that the deceased died due to the incised penetrating injury to chest and abdomen. PW1 and PW2 were examined as eye witnesses. PW1 is a close friend of deceased Abdul Basheer. According to him, deceased Basheer sustained stab injury at about 9 - 9.15 pm. He stated that he and deceased Basheer were standing near the toll post at the time of the incident. They heard some sound 10 to 15 metres away. When they went there, they had seen accused 1 and 2 and deceased Kojav and there was a push and pull between the said three persons. Then Basheer asked them not to quarrel and then first accused had questioned Basheer. According to him, second accused was having wooden stick with him. Second accused beat Basheer on his shoulder. Then there was a push and pull between second accused and Basheer and first accused took his knife and inflicted stab injury on deceased Basheer below his chest. In Ext.P1 first information statement, he stated that PW1 stood between the deceased Kojav. 1st accused and deceased. But, no

such case is made during deposition. During cross-examination, PW1 stated that somebody told him that 1st accused fell into the well. But, according to Exhibit P1, PW1 had seen somebody taking first accused from the well and PW1 left the place of occurrence only after 1st accused was taken out of the well. Again, PW1 has deposed that he was told by Kojav that Basheer had been stabbed by the 1st accused. PW1 had believed the said version of Kojav. A suggestion was put to PW1 in cross-examination that KOjavl had given such a version due to his enmity with the 1st accused. PW1 did not deny such suggestion. If PW1 had witnessed the incident there is no necessity for Kojav to inform PW1 that Basheer had sustained stab injury at the hands of the 1st accused. So, it is doubtful whether PW1 has seen the 1st accused stabbing deceased Basheer. PW2 also tried to give a similar version. According to him, he came to the place of occurrence hearing a sound with an emergency lamp. But, he is residing far away as can be seen by sketch. According to PW2, Kojav has not informed them that A1 had inflicted injury on Basheer. But, PW1 has got such a case. PW2 had seen the stabbing by A2 when he heard the cry of Basheer. But, as per Ext.P1 and PW1 Basheer cried out only after sustaining the injury. Even though both of them stated that they are close neighbours, it has come out in evidence that they are not close neighbours and their presence after 9.30 p.m. at the place of

occurrence was not explained. It has also come out from evidence that though large number of people gathered, no independent witness was examined. The trial Judge also noticed that first accused was found in a well and he was taken into custody after he was lifted from the well. Trial court found as follows:

> "It has come out in evidence that PW7 is the immediate neighbour. But, even PW7 has not seen the shifting of injured to the hospital by PWs 1 and 2. PW4, the autorickshaw driver, has also no case that the injured was taken in his autorickshaw by PWs 1 and 2. In this connection, it is also pertinent to note ext.P13. As per Ext.P13 inquest report, the injured was seen alive by Abdul Razaque, son of Ibrahim. There is no mention about PWs 1 and 2 as the persons who had seen the deceased Basheer immediately prior to his death. PW1 has also not deposed as to where he had been after the death of deceased Basheer and prior to the lodging of Ext.P1 F.I. statement. PW1 has no case that he has informed the incident to the parents of deceased Basheer. If PW1 had taken the deceased to the hospital definitely after the death he should have informed this matter to the parents of deceased Basheer. Admittedly, the parents or other relatives of deceased Basheer were not examined to prove as to how and through whom they got the information about the incident."

After detailed discussion, the trial court who has seen the demeanor of the witnesses PWs 1 and 2 disbelieved them.

3. The first accused has a case that while he was returning as usual at about 9 p.m from his work place, the deceased Kojav, Basheer, PW1 etc. attacked him and when he tried to escape from

the scene of occurrence, he had fallen into the well. According to him, PW1 and PW2 were not present at the scene of occurrence. The trial court also noticed that even though the incident occurred at 10.10 pm, and if PW1 and PW2, who are close friends, were present there, they could have informed the matter to the police station, which is within 4 km from the place of incident . But the matter was reported at 7.30 am on 31.8.1999 and there is a chance of deliberation and manipulation in the FIR and the court came to the conclusion that the prosecution was not able to prove the offence beyond reasonable doubt. In an appeal from order of acquittal interference can be only if the findings are perverse or unreasonable or there is patent illegality or irregularity. There is no patent illegality or irregularity. Going through the reasons stated in the affidavit filed in support of the delay condonation petition, no satisfactory explanations are made out to condone the long delay in filing the appeal. The delay condonation petition is dismissed. Consequently, the appeal is also dismissed.

J.B.KOSHY, JUDGE

K.HEMA, JUDGE

vgs.

J.B.KOSHY & K.HEMA, JJ.

Crl.A.NO. 2092 OF 20O4
and
Crl.M.Appl. 10988 of 2007

JUDGMENT

22.10.2007